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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/742,527
Filing Date: December 21, 2000
Appellant(s): BLASKO ET AL.

Andrew W. Spicer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 10, 2007 appealing from the Office action mailed May 03, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,463,585	HENDRICKS ET AL.	10-2002
6,424,998	HUNTER	07-2002

Art Unit: 3622

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4, 6-13, 16-21 and 85-112 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (US 6,463,585).

Regarding claims 1, 85-87, Hendricks teaches correlating available addressable units of a communication network with avails (advertising opportunities or slots) (see fig. 4, col. 4 line 54 to col. 5 lines 51). Hendricks teaches purchase of an avail on results of correlation (see col. 36 line 57 to col. 37 line 12). Hendricks teaches selecting a set of advertisements used in the chosen grouping by the advertisers and the frequency of display based on number of requests and cost paid by the respective advertisers to have the commercial displayed (see col. 71 lines 3-49).

Art Unit: 3622

Hendricks also teaches algorithm supporting different rates charged to different advertisers, which indicates that Hendricks generates a price before the selecting advertisement. Hendricks teaches during the placement of the advertising it is taken into account that the advertiser' budget is not exceeded.

Regarding claim 2, Hendricks teaches storing addressable unit data comprising information concerning characteristics of individuals associated with the addressable units (see col. 26 line 42 to col. 27 line 38 col. 42 line 65 to col. 43 lines 5, col. 48 line 23-31); receiving segment characteristics of a market segments from a user (see col. 30 line 54 to col. 31 line 55); correlating the received segment with the stored addressable unit data and automatically identifying the available addressable units to be correlated with the avail (see col. 21 lines 19-44, col. 68 line 48-60; col. 70 line 40 to col.71 line 45).

Regarding claims 3, 4, Hendricks teaches storing geo-demographic data and correlating geographic area with addressable unit data to identify the available units (see col. 4 line 54 to col. 5 line 50, col. 26 lines 42-67, col. 29 lines 6-60, Table D).

Regarding claims 6, 7, 18, Hendricks teaches storing viewership data identifying types of materials that viewers associated with the units and correlating the data with available units and identifying at least one avail associated with the list of materials (see col. 20 lines 4-35, col. 47 lines 33-60, col. 66 line 16 to col. 67 lines 4, col. 68 line 48-55, col. 70 line 40 to col. 41 line 49).

Regarding claims 8-13, Hendricks teaches selecting a set of advertisements used in the chosen grouping by the advertisers and the frequency of display based on number of requests and cost paid by the respective advertisers to have the commercial displayed (see col. 71 lines 3-49). Hendricks also teaches the algorithm supporting different rates charged to different advertisers

Art Unit: 3622

and taking into account the advertiser's budget and defining unique target categories and groups for an advertiser etc., wherein the parameters include at least one of a size of addressable units and a number of avails (see col. 37 lines 1-10, col. 71 lines 10-49).

Regarding claim 16 Hendricks teaches receiving payment information from a user for purchasing the at least one avail and processing the payment (see col. 71 lines 10-49).

Regarding claims 17 and 19-21 Hendricks teaches communication network as television service network or Internet and the units as set top boxes or nodes (see 9 lines 47-58, col. 64 line 55 to col. 65 line 14).

Regarding claims 88-90, 95-100 Hendricks teach receiving a market segment selection from a user (see col. 31 lines 1-6); Hendricks teaches obtaining a record of segment specific addressable units available belonging to a market segment; obtaining avails corresponding to the segment addressable units and generating a proposed price for avails in said inventory of *avails*; prior to selecting ads to be displayed (col. 20 lines 20-34, col. 31 lines 1-55 and col. 36 lines 56-67); wherein the price is dependent on a particular programming slot (see col. 35 line 1 to col. 37 line 57).

Regarding claims 91-94, Hendricks teaches determining the likelihood that a generic viewer in said market segment will watch said program; pricing based on the likelihood and based on time slot (see col. 26 line 13 to col. 27 line 67, col. 21 lines 29-48).

Regarding claims 101-113, Hendricks teaches generating a listing of addressable units (col. 5 lines 1-28); obtaining an inventory of avails corresponding to programs (see col. 5 line 29 to col. 6 line 13) and generating price for available avails based on the program; time slot or channel; market segment; addressable units; receiving market segment (see col. 20 line 4 to col.

Art Unit: 3622

21 line 44, col. 31 lines 1-55, col. 36 line 55 to col. 37 line 12, col. 71 lines 3-49); allowing a user to select for purchase a subset of the avails that result from the correlating, wherein the subset of the avails the user is allowed to purchase has not yet been purchased (see col. 35 lines 48 to col. 36 line 67 and table G&H). Hendricks teaches that this information may be provided by an advertiser responsible for the advertisement; and not all advertisement may be assigned to groups for a targeting category if an advertiser does not wish its advertisements to be targeted in the manner required by that targeting category (see col. 35 lines 48-65).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks further in view of Hunter (US 6,424,998).

Regarding claims 14 and 15 Hendricks is silent in regard to displaying the generated proposed price and a display device and the proposed price is overlaid on a display of available addressable units. Hunter teaches providing a customer interface (input device) for customer to see what time slot is available and for scheduling and purchasing the desired advertising time slot (see col. 4 lines 1-28 and col. 5 lines 1-51 and col. 8 lines 44-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a display and input means, as in Hunter, in Hendricks advertisement system to provide customers with direct

Art Unit: 3622

access to schedule and purchase time from available slots according to their preferences, as taught by Hunter (see col. 8 lines 44-67).

Regarding claim 5, Hendricks teaches use of graphical tools for analysis of data through the use of multiple graphic types such as line graphs, bar and charts, and teaches advertisers selecting subscriber based on demographic profile (see col. 30 line 65 to col. 31 line 6, col. 68 lines 48-55, col. 70 lines 31-67). It is well known in the art of geographic information system to provide geographic or location data in a form of a map. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the geographic data in the using a map since a map provides an easy and user-friendly view of geographic location.

(10) Response to Argument

Appellant argues that the Examiner continues to mistakenly equate the “avails” recited in Applicant’s claim with the “advertisement spots” or an actual advertisement itself. Appellant is completely wrong. Examiner’s interpretation of “avail” is “an advertisement opportunity” or “slots in which the advertisement itself is inserted”. Examiner does not interpret the term to mean the advertisement itself therefore; there is no mistake or misunderstanding in regard to the meaning of the term “avail”. Appellant also argues that it is unclear on how Fig. 4 shows anything as alleged by the Examiner. Examiner would like to point out that in Hendricks Fig. 4 is described in detail in fig. 4a through fig. 4e. For example the “MULTIPLE CHANNEL ARCHITECTURE MODULE” (265) of fig. 4 is further defined in 4a to show that it includes “program schedule module”, “advertisement/promotion information”, “set top subscriber information module”, “advertisement assignment module” etc.. Thus fig. 4 (which includes fig. 4a-4e) is relevant to provide the specific teachings of Hendricks.

Art Unit: 3622

Appellant asserts although, Hendricks does teach selecting advertisements for display at terminals, no connection is made between television terminals and avails. Examiner would like to point out that in Hendricks the advertisements are displayed during “program breaks” or “slots” or “spaces for advertisements” (advertisement opportunities) placed in programs that are transmitted to the set top (television terminals or addressable units). Whether it is directly or indirectly, there is a correlation (relationship) between the advertisement, program breaks and the addressable units.

Appellant argues although Hendricks may charge different rates to different advertisers, such rates, even if determined before scheduling occurs, are not for specific avails corresponding to particular addressable units. Appellant argues that Hendricks simply does not identify and price particular avails corresponding to addressable units that may be purchased by a user. Examiner would like to point out that the claim does not recite generating a proposed price for a specific avails corresponding to particular addressable units. The claim recites “generating a proposed price for purchase of at least one avail on result of the correlating step”. According to the claim the step is just correlating available units with an inventory of avails. Therefore, according to the claim there is no particular unit that is correlated to specific avail.

Regarding claim 10, Appellant argues that nowhere in Hendricks is user enabled to select a subset of the avails. Appellant asserts that the act of an advertiser providing an indication of the targeted group for an advertisement as taught in Hendricks is not the same as allowing a user to affirmatively select a subset of avails and subsets of addressable units. Examiner would like to point out that according to Appellant’s disclosure the user may select only a few avails which are tied to specific programs or channels, presentation time, etc. Similarly, the user may not want to

Art Unit: 3622

address all the identified available addressable units for displaying ads, and has an option of selecting a subset of the identified available addressable units. In one embodiment, the user may select a random number of the identified available avails from the entire list, or may select those of the identified available avails corresponding to a particular geographical region or area (see [0054]-[0056]). Hendricks, same as Appellant's method, selects avails by selecting a group with particular region or area.

Regarding claims 85, applicant argues that the Examiner failed to address a user selecting an avail for purchase. Examiner respectively disagrees. Examiner indicated that Hendricks teaches, “(b)asically this subroutine selects a set of commercial that will be used in the chosen groupings, function block 444. This selection process typically involves advertisement from various advertisement categories (from a number of advertiser which have purchased “air time”). Each advertisement will subsequently be assigned a number of times that it will be shown in a given time frame, block 446. This frequency of display may be based on various factors, including the number of requests and cost paid by the respective advertisers to have the commercial displayed (see col. 71 lines 11-29). Hendricks also teaches (see col. 30 line 65 to col. 31 line 6) in addition to accounting for the occurrence and alignment of program breaks with the programs, and the number of feeder channels available, the break management engine must also account for the number and type of available targeted advertisements for display and the variety of subscribers (according to group assignment numbers) who will potentially view the program and an advertiser will provide this information when forwarding the advertisements to the operation center. That means that the user (advertiser) is allowed to purchase a subset of the

Art Unit: 3622

avails that result from the correlating, wherein the subset of the avails the user is allowed to purchase has not yet been purchased.

Regarding claim 86, Appellant states that the Hendricks simply does not allow a user to make such a purchase request. Appellant argues that Hendricks only selects advertisements in an automated fashion to fill breaks based on a matching scheme and thereby are purchased by the advertiser. It is unclear if Appellant's argument is that the user and advertiser are different or advertiser purchasing an avail is not the same as advertiser making a purchase request. There is no patentable difference between making a purchase and requesting a purchase.

Regarding claims 88, Appellant argues that the Examiner refuse to acknowledge that Hendricks is concerned with matching ads to television terminals. Examiner has already addressed this argument in claim 1. Hendricks matches the advertisement to program breaks in programs that are aired to the set-top terminals. Appellant further argues that Hendricks does not indicate "receiving a market segment selection from a user". Appellant states the advertisers in Hendricks can only indicate the market segment to which their ad is oriented; Hendricks then performs matching of ads with the television terminals in automatic fashion without user input. But there is no step claimed that required user input after the market segment selection is received. Therefore, Appellant's argument is directed to a feature or step that is not claimed.

Appellant specification teaches as follows:

The television service provider may set certain criteria for determining whether each of the identified addressable units should be made available to the user. For example, criteria can be set such that only a certain percentage of the identified addressable units may become available to each user. This percentage may vary depending on the market segment characteristics selected by the user. For instance, *some advertisers (users) prefer to broadcast their advertisements to viewers who have high income*. Therefore, if the user has selected as part of the segment characteristics the income greater than \$50K/yr, only a certain percentage (e.g., 10%) of the identified addressable units with

Art Unit: 3622

incomes over \$50K/yr may become available to each such user so that different users can address at least a portion of those addressable units assigned with income greater than \$50K/yr. On the other hand, if the user has selected a less desirable segment among advertisers in general, e.g., subscribers with an income below \$30K/yr as part of the user's segment characteristics, a higher percentage (e.g., 30%) of the identified addressable units may become available to each such user.

Same as Appellant's teaching, Hendricks advertisers select the market segment (according to group assignment number as indicated in Table D, E, F etc.) to air there targeted advertisement. Appellant also argues that Hendricks does not obtain an inventory of avails. Hendricks takes under consideration all the subscribers' set top boxes (all addressable units) and all the programs breaks for all the programs that air to those subscribers. Therefore, Hendricks teaches obtaining all the available program breaks for the programs that airs. Also as indicated in claim 1, Hendricks teaches "generating a proposed price ...".

Regarding claim 95, Appellant argues that a user selects at least one avail. As indicated above in claim 88, Appellant selection of an avail is through market segment. Neither the claim nor Appellant's specification indicates that the avails are uniquely identified, and the user selected one of the avails by a unique identification. Same as Appellant's method, Hendricks teaches selecting market segment (group or category) and set top unit addresses, as in Table D-G, to select the program breaks or space where their advertisement should be placed.

Regarding claim 99, Appellant argues that disclosure of different rates to different advertisers or staying within an advertiser's budget, surely cannot inferred to teach basing the price of avails on the market segment selection. Claim 88 recites "receiving a market segment selection from a user" and claim 99 recites "proposed price is dependent on said market segment

Art Unit: 3622

selection”. Since Hendricks teaches user selecting market segment to air the advertisement, and is also charged for airing the advertisement, the charge is dependent on the market segment.

Regarding claims 101-103, Appellant argues that Hendricks does not receive a program selection from the user and obtaining an inventory of avails corresponding to said program selection. Examiner respectively disagrees. Table H and G, shows how programs are tied to groups and viewership breakdown by group for programs, depending on the time of the day or day of the week a program airs. Hendricks further teaches that the information may be provided by an advertiser responsible for the advertisement; and not all advertisement may be assigned to groups for a targeting category if an advertiser does not wish its advertisements to be targeted in the manner required by that targeting category (see col. 35 lines 48-65). Further Hendricks teaches using the information above, the spot placement engine determines how many feeder channels are assigned to which program; which targeting category is used for which program; which advertisement air on which feeder channels/program channels and which groups are assigned to which program channels. The algorithm can also modified to support different rates charged to different advertiser (see col. 36 lines 58-67) and can take into account the following i.e., ensuring advertiser’s budget in not exceeded, (see col. 35 and 36), which indicates that the advertiser selects a program and purchases the avail (program breaks) in that specific program.

Regarding Claim 104, the claim recites “the price for said avails is dependent on whether the addressable unit corresponds to an avail is within said market segment. According to Hendricks each addressable unit corresponds to a market segment (see Table E). For example Set-top unit address “12311” belongs to Category name (ADI), group 2 (location Washington DC), to Category (house hold (HH) income) group 3 (40-60K), etc. Table F shows that ADI

Art Unit: 3622

group 1 (located in Seattle), group 2 (located in Washington D.C.) assigned to specific programs and program breaks. Thus the avail (program breaks) of Hendricks are dependent to addressable units and are selected by the advertisers to correspond to a market segment (group).

Regarding claims 105 and 107-112 Appellant argues that no where in Hendricks can the user enter a correlation selection representative of the desire of the user to be presented with corresponding avails and have a proposed price generated for those avails. Examiner would like to point out that the claim does not recite user entering a correlation selection. The claim recites the method of receiving a correlation selection. Indicating the group (market segment) in which to air the advertisement provides the user with the subscriber's set top box addresses (table H).

Regarding claim 106, Appellant argues that in Hendricks there is no mechanism for affirmatively purchasing an avail. Examiner would like to point out that it is also true with Appellant's claim. There is no mechanism claimed to allow the user to affirmatively purchase an avail. Claim 105 recites receiving selection, generating a proposed price and claim 106 recites wherein the user **may actuate** the purchase of an avail. Therefore, since there is no mechanism provided, Examiner interpretation of claim 106 is that the user could indicate the purchase of an avail.

Regarding claim 113, Hendricks, same as Appellant's method, teaches selecting a subset of avails by selecting market segment (groups) (Table D-G).

Regarding claims 5, 14 and 15 Appellant argues that since Hendricks does not disclose all the features of the independent claims, Hunter does not teach or suggest the element(s) missing from Hendricks. Examiner clearly indicated above that Hendricks teaches the limitation

Art Unit: 3622

of the independent claim. Therefore claims 4, 14 and 15 are anticipated by Hendricks as modified by Hunter.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

YR

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